IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 34496 of 2006(F)

PETITIONER:

CHAKRAPANI VISWANATHAN,
S/O.CHAKRAPANI, AGED 65 YEARS,
THAIPARAMBIL, NADAKKAL.

BY ADV. SMT.C.G.BINDU
SMT.C.G.AJITHA
SMT.SEEMA.E.GEORGE

RESPONDENT:

ALAPPUZHA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MUNICIAPAL OFFICE BUILDING,
ALAPPUZHA.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 34496 OF 2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE JUDGMENT DATED 09.06.04 IN WP(C) NO.12825/04.

EXT.P2 : TRUE COPY OF THE NOTICE DATED 5.1.05 ISSUED BY RESPONDENT.

EXT.P3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY PETITIONER BEFORE THE OMBUDSMAN DT.18.7.05.

EXT.P4 : TRUE COPY OF ORDER DATED 9.3.06 OF OMBUDSMAN IN OP NO.1050/04.

EXT.P5 : TRUE COPY OF LAND ACQUISITION AWARD IN LAR NO.207/82.

EXT.P6 : TRUE COPY OF POSSESSION CERTIFICATE ISSUED BY VILLAGE OFFICER, ALAPPUZHA WEST TO THE PETITIONER.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 34496 OF 2007

Dated this the 17th day of October, 2007

JUDGMENT

The grievance of the petitioner is that the Municipality has illegally constructed a road through his property which had an original extent of 49 cents from out of which, according to the petitioner, 38 cents was acquired for the National Highway Bypass and 11 cents is the remaining extent. The petitioner had approached this Court earlier and this Court passed Ext.P1 judgment. Pursuant to Ext.P1, the Municipality issued Ext.P2 order rejecting the petitioner's claim. It was in the light of Ext.P2 that the petitioner filed complaint before the Ombudsman who passed Ext.P4. Under Ext.P4 the Ombudsman has accepted the stand of the Municipality that if documents are produced by the petitioner, the Municipality will be ready to have a measurement of the properties taken and accordingly disposed of the complaint directing the Municipality to conduct measurement of the properties on the basis of the title documents and to pay compensation, if any, due to the petitioner. The counsel for the Municipality in my opinion is justified in submitting that so long as Ext.P2 stands, it will be difficult for the petitioner to seek implementation of Ext.P4. However, if the petitioner has a genuine grievance, the same has to be redressed. Accordingly, I dispose of the

Writ Petition issuing the following directions:

The petitioner will file objections to Ext.P2 within three weeks of his receiving copy of this judgment along with the objections. The petitioner will file photocopies of all relevant documents upon which the petitioner relies for claim of title to the property. Once objections and documents are filed, the Municipality will make arrangements to have a measurement of the properties on the basis of the documents. Measurement as directed above will be conducted within six weeks of the petitioner filing objections and producing documents. If on the measurement it is revealed that any portion of the petitioner's property has been utilised by the Municipality for construction of road and that the petitioner has not been paid any compensation, the Municipality will determine the payable compensation on the basis of the market value of the land and communicate the decision to the petitioner. If the petitioner is aggrieved by the decision, it is open to him to challenge the decision.

PIUS C. KURIAKOSE, JUDGE

btt